

# THE FINANCIAL SERVICES ROUNDTABLE



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RICHARD M. WHITING  
EXECUTIVE DIRECTOR

October 5, 2000

Information Management & Services Division  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552

Re: Docket No. 2000-68

Dear Sir/Madam:

The Financial Services Roundtable, a national association of the largest integrated financial services firms in the United States, respectfully submits the following comments on a joint notice of proposed rulemaking issued by the Office of the Comptroller of the Currency, Federal Reserve Board, the Federal Deposit Corporation and the Office of Thrift Supervision regarding "Consumer Protections for Depository Institution Sales of Insurance" (Insurance Sales Regulation) pursuant to §305 of the Gramm-Leach-Bliley Act (GLBA). *65 Federal Register* 50882 (August 21).

## GENERAL COMMENTS

### **Workable Effective Date**

The proposed regulation contains no effective date and should be amended to be made effective no earlier than November 2001. This recommended revision would allow sufficient time for a comprehensive and definitive sorting out of the relationship between the federal requirements imposed by these regulations and the many state laws that now govern insurance practices. Some state laws indeed may conflict with these implementing federal regulations or may otherwise impact the insurance practices that covered institutions/persons will be required to undertake in order to comply with the proposed regulations. Such conflicts and ambiguities between federal and state requirements must be resolved so as to preserve the supremacy of the federal law and to avoid imposing incompatible, unnecessarily burdensome and/or confusing regulatory requirements. An effective date of November 2001 would provide time and

opportunity to identify such circumstances and also would give financial institutions adequate time to develop policies, practices and systems to comply with the new federal rules.

## SPECIFIC COMMENTS

### **I. Annuities Should Not Be Covered by the Regulation**

Bank-related sales of annuities currently are governed by “The Interagency Statement on Retail Sales of Nondeposit Investment Products” (Interagency Statement), which was issued on February 15, 1994 by the same four regulators proposing the instant Insurance Sales Regulation. Annuities have been interpreted to be financial products rather than insurance for purposes of bank regulation and, accordingly, the Interagency Statement has been interpreted as applying to annuity sales. The conclusion that annuities are not insurance but financial products is supported by an OCC ruling that was upheld by the U.S. Supreme Court in *NationsBank of North Carolina v. Variable Annuity Life Insurance Co.*, 115 S. Ct. 810 (1995), and also is consistent with similar rulings by both the Securities and Exchange Commission and NASD.

Depository institutions have developed considerable experience with and invested substantial resources to conform their annuity sales practices with the existing Interagency Statement and it has proven very effective in addressing any concerns arising from bank-related sales of annuities. With some minor revisions relating to the form of disclosure, the Interagency Statement would be perfectly consistent with GLBA. Therefore, to include annuity sales practices within the proposed Insurance Sales Regulation would be unnecessary, duplicative and confusing to the industry. There is no compelling need to impose additional federal requirements on bank-related annuity sales practices and the Roundtable firmly believes that the proposed regulations should not be made applicable to annuities. Finally, in no event should annuities be covered by both the Insurance Regulation and the Interagency Statement.

### **II. Consistency Between the Regulation and the Statement**

If it is decided to keep the Interagency Statement in place as to insurance sales, the Regulation should provide clear guidance as to how it and the Statement will fit together. There are some topics covered in the Statement that are not covered in the draft Regulation. In other cases, a topic is discussed in both the Statement and the Regulation, but the guidance is not exactly the same. One example is the discussion of where insurance sales may take place in an office of a depository institution. Presumably, the Regulation should govern where it gives guidance on a particular topic, and the Statement should govern where the Regulation is silent.

### **III. Definitions**

**(A) Consumer** -The definition of “consumer” in proposed section \_\_.20 (c) should be limited to individuals who obtain or apply for insurance products or annuities primarily for personal, family, or household purposes. Also, the Roundtable believes that the clear intent of Congress

was to exclude small businesses from this definition.

**(B) Covered Person** - We believe this term (*i.e.*, proposed section \_\_.20 (e)) is overbroad. It implies that if a person meets one of the four criteria under the definition, then all of his activity is covered. That may be appropriate in cases where a bank is conducting the insurance sales activity, but not for other parties. We believe the definition should focus on the *sales activity* of the person or entity. We suggest two alternate ways of changing the proposed Regulation. One is to change the term "covered person" to "covered transaction" or "covered sales activity," and to make clear that the disclosure requirements do not apply to sales activity unrelated to a depository institution. Another option would be to simply state in §14.40 that the disclosure requirements only apply to sales or solicitation activities involving a depository institution or its employees.

**(C) Electronic Media** -The question is whether this term used in proposed section \_\_.20 (g) is defined in a manner consistent with GLBA's requirement that disclosures be both written and oral. We believe the definition is appropriate in that it allows for technological innovation. Comment also is solicited as to whether the proposed rules for electronic and telephone disclosures are flexible enough to allow for technological innovation, or alternatively, whether detailed guidance should be provided concerning online advertising such as was recently issued by the FTC. We believe that such guidance is unnecessary in light of the FTC rules and the new federal law recognizing electronic signatures.

#### **IV. Disclosures**

**(A)** The Roundtable believes that the scope of the disclosure requirements is overbroad and burdensome. For example, consistent with the purpose of the Interagency Statement, the disclosure requirements of proposed \_\_.40 (a) should be limited to insurance products that have an investment component. There is no real risk of customer confusion as to whether or not traditional credit-related insurance products that do not have an investment component (*e.g.*, credit life, accident, health and unemployment life insurance, mortgage insurance, vendors single interest insurance and force-placed insurance products) are insured by the FDIC (See also FDIC FIL-80-98). Moreover, these products already have adequate regulatory and statutory provisions prohibiting unlawful tying and the Truth in Lending Act already requires voluntary disclosures as to these type of insurance.

**(B)** The three-day exception for credit applications taken by telephone in proposed subsection \_\_.40 (b)(ii) should also apply to insurance applications taken by telephone under proposed subsection \_\_.40(b)(i).

**(C)** Subsection (b)(5) requires the consumer to acknowledge receipt of the disclosures, either in writing or electronically. Occasionally customers receive the disclosures but refuse to sign the

acknowledgment. The regulations should state the procedures to be followed in such cases.

(D) The regulations should clarify whether an “initial purchase” disclosure continues to satisfy the disclosure requirements if the disclosure continues to be accurate. For example, if disclosures given to a consumer purchasing a life insurance policy in 2001 continued to be accurate in 2002, another set of disclosures should not be required.

### CONCLUSION

The Roundtable appreciates the opportunity to comment upon the proposed rulemaking. The agencies have proposed a regulation that, with the revisions and amendments indicated herein, implement the provisions of GLBA in a fair and reasonable way. If I, Roundtable President Steve Bartlett, or any member company of the Roundtable may be of further assistance on this matter, please do not hesitate to contact me.

Sincerely,

Richard M. Whiting